

AMENDED IN SENATE MARCH 26, 2003

**SENATE BILL**

**No. 973**

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**Introduced by Senator Machado**

February 21, 2003

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An act to amend Section ~~6166~~ of the Government Code, relating to ~~state agencies~~; 12102 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 973, as amended, Machado. ~~State agencies: payments~~ Public contracts: state agencies: procedures.

*Existing law requires the Department of Information Technology and the Department of General Services to maintain policies and procedures governing the state procurement of materials, supplies, equipment, and services, and the acquisition of electronic data processing and telecommunications goods and services. Existing law provides that information technology goods must be disposed of by the state in a manner that best serves the interests of the state.*

*This bill would require that data contained on surplus data storage hardware be overwritten, or rendered unrecoverable by other means, before that hardware may be disposed of, auctioned, or otherwise transferred by the state.*

~~Existing law requires state agencies to accept payment of fees, penalties, taxes, interest, and other state levies by means of a credit card or other payment device. Existing law requires any state agency accepting payment by credit card to notify each eligible payer of that fact, and to provide, as specified, billing statements with payment forms and instructions for payment by credit card.~~

~~This bill would also require any state agency accepting payment by an “other payment device” to notify each eligible payer of his or her options for making payment and to provide billing statements with payment forms and instructions for payment by “other payment device.”~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

~~SECTION 1. Section 6166 of the Government Code is~~

*SECTION 1. Section 12102 of the Public Contract Code is amended to read:*

12102. The Department of Information Technology and the Department of General Services shall maintain, in the State Administrative Manual, policies and procedures governing the acquisition and disposal of information technology goods and services.

(a) Acquisition of information technology goods and services shall be conducted through competitive means, except when the Director of General Services determines that (1) the goods and services proposed for acquisition are the only goods and services which can meet the state’s need, or (2) the goods and services are needed in cases of emergency where immediate acquisition is necessary for the protection of the public health, welfare, or safety. The acquisition mode to be used and the procedure to be followed shall be approved by the Director of General Services. The Department of General Services shall maintain, in the State Administrative Manual, appropriate criteria and procedures to ensure compliance with the intent of this chapter. These criteria and procedures shall include acquisition and contracting guidelines to be followed by state agencies with respect to the acquisition of information technology goods and services. These guidelines may be in the form of standard formats or model formats.

(b) Contract awards for all large-scale systems integration projects shall be based on the proposal that provides the most value-effective solution to the state’s requirements, as determined by the evaluation criteria contained in the solicitation document. Evaluation criteria for the acquisition of information technology

1 goods and services, including systems integration, shall provide  
2 for the selection of a contractor on an objective basis not limited  
3 to cost alone.

4 (1) The Department of General Services shall invite active  
5 participation, review, advice, comment, and assistance from the  
6 private sector and state agencies in developing procedures to  
7 streamline and to make the acquisition process more efficient,  
8 including, but not limited to, consideration of comprehensive  
9 statements in the request for proposals of the business needs and  
10 governmental functions, access to studies, planning documents,  
11 feasibility study reports and draft requests for proposals applicable  
12 to solicitations, minimizing the time and cost of the proposal  
13 submittal and selection process, and development of a procedure  
14 for submission and evaluation of a single proposal rather than  
15 multiple proposals.

16 (2) Solicitations for acquisitions based on evaluation criteria  
17 other than cost alone shall provide that sealed cost proposals shall  
18 be submitted and that they shall be opened at a time and place  
19 designated in the solicitation for bids and proposals. Evaluation of  
20 all criteria, other than cost, shall be completed prior to the time  
21 designated for public opening of cost proposals, and the results of  
22 the completed evaluation shall be published immediately before  
23 the opening of cost proposals. The state's contact person for  
24 administration of the solicitation shall be identified in the  
25 solicitation for bids and proposals, and that person shall execute  
26 a certificate under penalty of perjury, which shall be made a  
27 permanent part of the official contract file, that all cost proposals  
28 received by the state have been maintained sealed and under lock  
29 and key until the time cost proposals are opened.

30 (c) The acquisition of hardware acquired independently of a  
31 system integration project may be made on the basis of lowest cost  
32 meeting all other specifications.

33 (d) The 5 percent small business preference provided for in  
34 Chapter 6.5 (commencing with Section 14835) of Part 5.5 of  
35 Division 3 of Title 2 of the Government Code and the regulations  
36 implementing that chapter shall be accorded to all qualifying small  
37 businesses.

38 (e) For all transactions formally advertised, evaluation of  
39 bidders' proposals for the purpose of determining contract award  
40 for information technology goods shall provide for consideration

1 of a bidder's best financing alternatives, including lease or  
2 purchase alternatives, if any bidder so requests, not less than 30  
3 days prior to the date of final bid submission, unless the acquiring  
4 agency can prove to the satisfaction of the Department of General  
5 Services that a particular financing alternative should not be so  
6 considered.

7 (f) Acquisition authority may be delegated by the Director of  
8 General Services to any state agency which has been determined  
9 by the Department of General Services to be capable of effective  
10 use of that authority. This authority may be limited by the  
11 Department of General Services. Acquisitions conducted under  
12 delegated authority shall be reviewed by the Department of  
13 General Services on a selective basis.

14 (g) To the extent practical, the solicitation documents shall  
15 provide for a contract to be written to enable acquisition of  
16 additional items to avoid essentially redundant acquisition  
17 processes when it can be determined that it is economical to do so.

18 Further, it is the intent of the Legislature that, if a state  
19 information technology advisory committee or a state  
20 telecommunications advisory committee is established by the  
21 Governor, the Director of Information Technology, or the Director  
22 of General Services, the policies and procedures developed by the  
23 Director of Information Technology and the Director of General  
24 Services in accordance with this chapter shall be submitted to that  
25 committee, including supplier representatives, for review and  
26 comment, and that the comment be considered by both  
27 departments prior to the adoption of any policy or procedure. It is  
28 also the intent of the Legislature that this section shall apply to the  
29 Department of General Services Information Technology  
30 Customer Council.

31 (h) Protest procedures shall be developed to provide bidders an  
32 opportunity to protest any formal, competitive acquisition  
33 conducted in accordance with this chapter. The procedures shall  
34 provide that protests must be filed no later than five working days  
35 after the issuance of an intent to award. Authority to protest may  
36 be limited to participating bidders. The Director of General  
37 Services, or a person designated by the director, may consider and  
38 decide on initial protests. A decision regarding an initial protest  
39 shall be final. If prior to the last day to protest, any bidder who has  
40 submitted an offer files a protest with the department against the

awarding of the contract on the ground that his or her bid or proposal should have been selected in accordance with the selection criteria in the solicitation document, the contract shall not be awarded until either the protest has been withdrawn or the State Board of Control has made a final decision as to the action to be taken relating to the protest. Within 10 calendar days after filing a protest, the protesting bidder shall file with the State Board of Control a full and complete written statement specifying in detail the grounds of the protest and the facts in support thereof.

(i) (1) Information technology goods ~~which~~ *that* have been determined to be surplus to state needs shall be disposed of in a manner that will best serve the interests of the state. Procedures governing the disposal of surplus goods may include auction or transfer to local governmental entities.

(2) *Data contained on surplus data storage hardware shall be overwritten, or rendered unrecoverable by other means, before the hardware is disposed of, auctioned, or otherwise transferred from state possession.*

(j) A supplier may be excluded from bid processes if the supplier's performance with respect to a previously awarded contract has been unsatisfactory, as determined by the state in accordance with established procedures which shall be maintained in the State Administrative Manual. This exclusion may not exceed 360 calendar days for any one determination of unsatisfactory performance. Any supplier excluded in accordance with this section shall be reinstated as a qualified supplier at any time during this 360-day period, upon demonstrating to the department's satisfaction that the problems which resulted in the supplier's exclusion have been corrected.

~~amended to read:~~

~~6166. — Any state agency accepting payment by means of credit card or other payment device, whether pursuant to this chapter or Section 19005 of the Revenue and Taxation Code, shall, when sending a billing statement, notify each payer permitted to make payment to that agency by means of a credit card or other payment device of his or her options for making payment. Each state agency that sends a billing statement to an individual who is allowed to make payment to that agency by means of a credit card or other payment device shall provide both of the following on that statement or on a document provided with the statement:~~

- 1     ~~(a) A designated space on the payment form upon which the~~  
2     ~~payer can provide a credit card number, expiration date, signature,~~  
3     ~~or other payment information.~~  
4     ~~(b) Complete instructions as to the procedure, by means of~~  
5     ~~telephone or otherwise, that the payer must follow in order to pay~~  
6     ~~by means of a credit card or other payment device.~~

